



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: California Mobile Communications

File: B-223614.2

Date: August 19, 1986

DIGEST

Dismissal of a protest for failure to meet the requirement that a protester provide the contracting agency with a copy of the protest within 1 working day after the protest is filed, is affirmed. The sending of a mailgram copy of the protest to the contracting agency does not satisfy the notice requirement where the agency did not receive the mailgram.

DECISION

California Mobile Communications (CMC) requests reconsideration of our dismissal of its protest, concerning invitation for bids (IFB) DABT47-86-B-0063 issued by the Department of the Army. CMC's protest was filed in GAO on July 11, 1986. We dismissed the protest on July 28, 1986, because on that date we were notified by the Army that CMC did not provide it with a copy of its protest and, therefore, CMC failed to comply with section 21.1(d) of our Bid Protest Regulations, 4 C.F.R. part 21 (1986).

We affirm the dismissal.

CMC argues that it complied with section 21.1(d) by sending a copy of its protest to the appropriate office by Western Union mailgram on the same date that its protest was filed in GAO.

Section 21.1(d) of our Bid Protest Regulations specifically states that "the contracting officer must receive a copy of the protest no later than 1 [working] day after the protest is filed" with our Office. The basis for the 1-day notice requirement is found in the Competition in Contracting Act of 1984, 31 U.S.C.A. § 3553 (West Supp. 1985), which requires the contracting agency to file a written report with our Office within 25 working days after we notify the agency of

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the protest. Any delay in furnishing a copy of the protest to the contracting agency not only hampers the agency's ability to meet the 25-day statutory deadline, but also frustrates our efforts to consider all objections to agency procurement actions in as timely a fashion as possible. Sabin Metal Corp.--Reconsideration, B-219171.2, July 24, 1985, 85-2 C.P.D. ¶ 79.

CMC's actions did not satisfy the notice requirement in section 21.1(d). CMC did not comply with the notice requirement merely by sending the mailgram since the regulation defines notice as receipt of a copy of the protest by the contracting officer. See Westinghouse Electric Corp., Westinghouse Furniture Systems Division--Reconsideration, B-222428.2, June 3, 1986, 86-1 C.P.D. ¶ 516. As stated above, as of July 28, 1986, more than 2 weeks after CMC's protest was filed, the contracting agency had not received a copy of the protest. Thus, CMC in fact did not satisfy the 1-day notice requirement.

While we have waived the dismissal for failure to furnish the agency a copy of a protest within 1 day of filing at GAO in appropriate circumstances, for example, where the agency otherwise receives timely notice of the protest, CDI Marine Co., B-219934.2, Mar. 12, 1986, 86-1 C.P.D. ¶ 242, we do not find that such a waiver is warranted here. There is no indication that the contracting officer had timely notice of the protest.

Furthermore, the protest, as we understand it, is somewhat vague as to the legal objection alleged and would have permitted the agency to respond to it only in a general way. The protester asserts that amendments to the IFB were issued to accommodate one manufacturer's product. This action, in itself, does not necessarily state a legal basis of objection since the protester does not allege how it was prejudiced by the agency's action or that it was precluded from competition. In this connection, our Office repeatedly has stated that the argument that a specification was "written around" a competitor's product is not by itself a valid basis of protest. DSP Technology, Inc., B-220593, Jan. 28, 1986, 86-1 C.P.D. ¶ 5.

The dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel